

1 KEVIN V. RYAN (CASBN 118321)
2 United States Attorney
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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION
11

12 UNITED STATES OF AMERICA,)	No.
13 Plaintiff,)	
14 v.)	VIOLATION: 42 U.S.C. §§ 7412 and
15 CLIFFORD CHENG,)	7413(c)(4) – Clean Air Act, Negligent
16 Defendant.)	Release of Hazardous Air Pollutant
17)	(Class A Misdemeanor)
)	OAKLAND VENUE

18 INFORMATION

19 The United States Attorney charges:

20 Introduction

21 At all times relevant to this Information:

22 A. The Defendant

23 1. The defendant CLIFFORD CHENG is a partner in Cheng, Chow and Chu, Inc. ("Cheng,
24 Chow and Chu"), a California corporation that owns a commercial real estate site located at
25 22455 Maple Court and 22336 Main Street, in Hayward, California ("the Hayward facility").
26 The Hayward facility is composed of five connected buildings, with a total space of 52,000
27 square feet.

28 2. In approximately 1993, CLIFFORD CHENG purchased the Hayward facility on behalf of

INFORMATION

1 Cheng, Chow and Chu. At this time, CLIFFORD CHENG received an survey conducted of the
2 Hayward facility which identified the location of the asbestos located within the Hayward facility
3 ("Hayward facility asbestos survey").

4 3. In 1989, an asbestos survey was conducted of the Hayward facility identifying asbestos
5 material throughout the facility including in the fire-proofing, insulated pipes, linoleum, ceiling
6 tiles, floor and carpet mastic, floor tiles and roofing materials. The survey stated that the
7 asbestos should be removed prior to demolition.

8 B. The Clean Air Act

9 4. In 1971, the U.S. Environmental Protection Agency ("EPA") designated asbestos a
10 hazardous air pollutant. 36 Fed. Reg. 5931 (Mar. 31, 1971). Asbestos continues to be listed as a
11 hazardous air pollutant. Title 42, United States Code, Section 7412(a)(6) and (b). In order to
12 protect public health by minimizing the amount of air pollutants released into the environment,
13 the Clean Air Act authorized the EPA to establish national emission standards for hazardous air
14 pollutants ("NESHAP").

15 5. EPA has promulgated NESHAP work practice standards in lieu of an emission standard
16 for the demolition and renovation of certain facilities and for the handling of asbestos-containing
17 waste. 40 C.F.R. § 61.145 and 61.150; 42 U.S.C. § 7412(h)(1). These asbestos work practice
18 standards define the appropriate procedures for the safe handling and removal of asbestos during
19 renovation projects so as to prevent emissions of particulate asbestos material into the air.

20 6. The Clean Air Act makes it a criminal offense for any person who negligently releases
21 asbestos into the ambient air and who at the time negligently places another person in imminent
22 danger of death and serious bodily injury. *See* 42 U.S.C. § 7412(b)(1), 7413(c)(4).

23 C. The Renovation of the Facility

24 7. In approximately August 2000, CLIFFORD CHENG hired a contractor to conduct an
25 extensive renovation of the Hayward facility. This renovation included removing all materials,
26 from the floor to the ceiling, from approximately 30,000 square feet of the facility. CLIFFORD
27 CHENG knew that this material contained asbestos.

28 8. From August 2000 through September 2000, the contractor conducted a renovation of the

1 Hayward facility. During this renovation, asbestos was released into the ambient air.

2 9. On September 27, 2000, an inspector with the Bay Area Air Quality Management
3 Division, the local air agency, inspected the Hayward facility. The inspector discovered that the
4 asbestos material was being improperly removed from the Hayward facility. Four open topped
5 dumpsters located outside the facility contained asbestos. In addition, the inspector found
6 numerous piles of construction debris dumped outside of the Hayward facility, which were later
7 sampled and found to contain asbestos. During the inspection, eight individuals were conducting
8 the renovation without adequate protective clothing. There were clouds of dust throughout the
9 inside and immediately outside the Hayward facility.

10 COUNT ONE: (42 U.S.C. §§ 7412, 7413(c)(4) – Clean Air Act Violation

11 10. Beginning in August 2000, and continuing through September 2000, in the Northern
12 District of California, the defendant

13 **CLIFFORD CHENG,**

14 did negligently release into the ambient air a hazardous air pollutant, that is, asbestos, and
15 thereby negligently placed another person in imminent danger of death and serious bodily injury,
16 in violation of Title 42, United States Code, Sections 7412 and 7413(c)(4).

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18 DATED:

KEVIN V. RYAN
United States Attorney

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21
22 J. DOUGLAS WILSON
Acting Chief, Oakland Branch Office

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24 (Approved as to form: _____)
25 AUSA BESSETTE